

-PS-

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

RASHEEN NEWKIRK, 11341-055,

Petitioner,

-v-

UNITED STATES OF AMERICA,

Respondent.

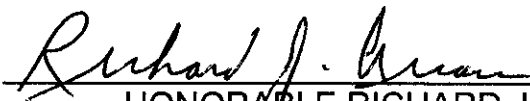
DECISION AND ORDER

01-CR-0165A

05-CV-0519A

Petitioner has notified the Court that he wishes to withdraw this petition to vacate his sentence pursuant to 28 U.S.C. § 2255 because his motion to withdraw the Mandate of the Second Circuit Court of Appeals dismissing his appeal has been granted by the Second Circuit and his appeal reinstated. Because no answer or dispositive motion has been filed, the notification must be treated as a voluntary withdrawal pursuant to Fed.R.Civ.P. 41(a)(1)(i). The petition is hereby dismissed without prejudice. Petitioner is cautioned, however, that the one-year limitations period set forth in 28 U.S.C. § 2255 continues to be applicable and that failure to re-file his petition within the limitations period may result in his petition being deemed time-barred.

IT IS SO ORDERED.



HONORABLE RICHARD J. ARCARA
CHIEF JUDGE
UNITED STATES DISTRICT COURT

Dated: Aug 23, 2005